

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STATE OF DELAWARE,)
)
 v.)
)
RASAUN HARRIS,)
(ID. No. 1008016352))
)
 Defendant.)

Submitted: March 11, 2011
Decided: June 30, 2011

Gregory R. Babowal, Esq., and Rae M. Mims, Esq., Department of Justice, Dover, Delaware. Attorneys for the State.

Paul S. Swierzbinski, Esq., Dover, Delaware. Attorney for the Defendant.

Upon Consideration of Defendant's
Motion For Reverse Amenability
DENIED

VAUGHN, President Judge

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ORDER

Upon consideration of the defendant's application that this case be transferred to Family Court pursuant to 10 *Del. C.* § 1011(b), and the record of the case, it appears that:

1. By indictment filed in November 2010, the defendant, Rasaun Harris, was charged with Murder in the First Degree, Possession of a Firearm During the Commission of a Felony,¹ and Possession of a Firearm by a Person Prohibited. The indictment charges that the alleged offenses occurred on August 9, 2010, when the defendant was fifteen years old. On November 18, 2010, the defendant filed his application that the case be transferred to Family Court pursuant to 10 *Del. C.* § 1011(b). A hearing on the application was held on March 2, 2011.

2. In acting upon the defendant's application, I am required to consider the following factors: (1) the nature of the present offense and the extent and nature of the defendant's prior record; (2) the nature of past treatment and rehabilitative efforts and the nature of the defendant's response thereto, if any; and (3) whether the interests of society and the defendant would be best served by trial in the Family Court or in the Superior Court.

3. As to the nature of the offenses, it must be determined whether the State has made a *prima facie* showing of Murder in the First Degree,² which is established

¹ The defendant acknowledges that count two must remain in the Superior Court pursuant to 11 *Del. C.* § 1447a(f).

² 10 *Del. C.* § 1010(a)(3).

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if there is a fair likelihood that the defendant will be convicted.³ A fair likelihood of conviction is established when, considering the totality of the evidence, and bearing in mind that the defense has yet to be presented, the likelihood of a conviction is real if the defense does not sufficiently rebut the State's evidence.⁴ A real probability must exist that a reasonable jury could convict on the totality of the evidence assuming that the evidence introduced at the hearing stands unrebutted by the defendant at trial.⁵

4. The record shows that the State has made a *prima facie* case of Murder in the First Degree of Peter Gianetti, and, therefore, Possession of a Firearm During the Commission of a Felony, and Possession of a Firearm by a Person Prohibited. The victim was shot five times at the Lucky 7 gas station on Route 13 in Dover, Delaware. One of the bullets punctured his heart. After several hours in the hospital the victim succumbed to his injuries. An autopsy determined that the cause of death was homicide. The State presented the testimony of the lead investigator at the hearing. That investigator indicated that much of the August 9, 2010 incident was caught on a surveillance camera located at the gas station. The video showed a confrontation at the gas pump between the victim and a person who matched the description of the defendant. Moments later the person matching the description of the defendant can be seen shooting at the victim. The police were also able to

³ *State v. Doughty*, 2011 WL 486537, at *1 (Del. Super. Feb. 10, 2011)(citing *Marine v. State*, 607 A.2d 1185, 1211 (Del. 1992).

⁴ *State v. Woolford*, 2000 WL 33342350, at *1 (Del. Super. 2000); *see also State v. Doughty*, 2011 WL 486537, at *1 (Del. Super. Feb. 10, 2011).

⁵ *State v. Woolford*, 2000 WL at *1.

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determine, through the video, that the perpetrator fled the gas station in a mid-sized, newer model Acura. In aid of the investigation, a witness came forward and identified the person on the tape as Rasaun Harris and the vehicle as his. The witness told police that the defendant and victim had recently been in an argument. When the defendant was arrested, he admitted that he owned a black Acura which was identical to the one seen in the gas station surveillance video.

5. Based on the evidence presented at the hearing, a *prima facie* showing has been made for all three charged counts on the indictment. The evidence presented at the hearing showed a real probability that a reasonable jury could convict the defendant of all three charges based on the totality of the evidence.

6. Now the Court moves to the second factor, the extent and nature of defendant's prior record. Here, the defendant has a lengthy adjudication record. That record includes, in part: Disorderly Conduct; Theft of a Motor Vehicle; Resisting Arrests; Harassment; Criminal Trespass First Degree; Menacing; Aggravated Menacing; Reckless Burning; misdemeanor Theft; Offensive Touching; and two violation of probations. The defendant's re-entry probation officer testified at the hearing about the defendant's juvenile history. She worked with the defendant for a period of time and was responsible for his re-entry and transition into society – as he was just coming out of juvenile placement. The probation officer testified that the defendant was unable to fully re-enter the community because he continued to receive new criminal charges and was non-compliant with treatment. The defendant's record is filled with adjudications, many of which are violent in nature, and, therefore, this factor weighs in favor of denying the motion for reverse amenability.

7. Next, the nature of past treatments and rehabilitative efforts; and the

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defendant's response thereto. The defendant's treatment history is as lengthy as his adjudication record. The defendant has been subjected to electronic monitoring, voice recognition curfew monitoring, Multi-Systemic Therapy, Vision Quest FCICM, Vision Quest's Outdoor Challenge, Camelot, Moulds Cottage, Snowden Cottage, PEAK, random urine screens, two crisis evaluations, a stay at the Rockford Center, and is currently being housed at Stevenson House. The defendant, however, continued to be arrested on new criminal charges. Each form of therapy, education, and discipline was ineffective. In fact, the defendant was recently charged with a hate crime, Riot, Assault in a Detention Facility, and Conspiracy Second Degree while being held at the Stevenson House on the underlying Murder in the First Degree charges. Additionally, Michael Fitzpatrick, the juvenile probation officer who supervised the defendant until the murder charges were filed, testified at the hearing. He noted that the defendant had a severe attitude problem, a tendency to be non-compliant, and a tendency to be disrespectful towards authority – which included attempts at intimidating those in authoritative positions. The Family Court has treated the defendant with almost every tool at its disposal, and, yet, the defendant has never responded in a positive manner. This factor weighs in favor of denying the defendant's motion.

8. Finally, there is the issue of whether the interests of society and the defendant would be best served by trial in Family Court or in Superior Court. The defendant presented testimony from Abraham Mensch, Ph.D. Dr. Mensch testified that the defendant would benefit from treatment at the Ferris School instead of the Youth Criminal Offenders Program (YCOP) at Howard R. Young Correctional Institution. According to Dr. Mensch, the Ferris School would teach the defendant

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skills that would make him less dangerous by focusing on the defendant's neuropsychological and cognitive impairments. The State, however, responded that the Ferris School is a six-month program, and, therefore, is ill-equipped to handle long-term juvenile treatment. Additionally, the State noted that Dr. Mensch did not have the opportunity to review the treatment records for the defendant.

9. I conclude that The Ferris School program will not sufficiently treat the defendant who, it appears, is aggressive, violent, and non-compliant. I find that if the defendant is convicted of the offenses charged that neither his interest nor the interest of society would be served by a program offered at the Ferris School. The violence alleged in this case comes at the culmination of a lengthy period of increasingly violent behavior. Family Court has used a wide array of techniques and programs at its disposal to try and help the defendant, but each one has been unsuccessful. The interests of both the defendant and society require, if he is convicted, that the defendant be subjected to adult treatment. Therefore, I find that the interests of justice require that the defendant's case be adjudicated in this Court.

10. The defendant's application to have his case transferred to Family Court is *denied*.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

President Judge

oc: Prothonotary
cc: Counsel
File